

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Petition of Pac-West Telecomm, Inc.)	WC Docket No. 11-115
For Declaratory Ruling Regarding Access)	
Charges Assessed On VoIP-Initiated Access Traffic)	
)	

COMMENTS OF COMPTEL

COMPTEL, through undersigned counsel, hereby supports Pac-West Telecomm, Inc.’s above-captioned Petition For Declaratory Ruling.¹ Pac-West seeks a declaratory ruling that an interexchange carrier (“IXC”) is required to pay a local exchange carrier’s (“LEC”) tariffed access charges for toll free (or 8YY) calls when that LEC performs the necessary database query services, the query identifies the IXC as the intended recipient, and the LEC delivers the 8YY call to the IXC or an intermediate LEC with which the IXC is directly interconnected, regardless of whether the 8YY call was initiated in Internet Protocol (“IP”) format or Time Division Multiplexing (“TDM”) format.² Such a ruling is necessary because, according to Pac-West, Verizon declines to pay the tariffed charges for the access services Pac-West provides as necessary inputs to Verizon’s toll free services for calls that are initiated in IP format, converted to TDM format before they leave Pac-West’s network, and are then terminated on the public

¹ See FCC Public Notice, Pleading Cycle Established For Comments on Pac-West Telecomm, Inc. and Verizon Petitions For Declaratory Ruling, WC Docket No. 11-115, DA 11-1171 (rel. July 7, 2011). These Comments reflect the position of a majority of COMPTEL members. Individual members may be filing separate comments where they advocate positions that are different from those stated herein. Some members, including Sprint Nextel, do not join in these comments.

² Pac-West Petition at 1-2.

switched telephone network (“PSTN”) in TDM format.³ Such a ruling would also be consistent with the recommendations of the National Broadband Plan, which over a year ago cited the “significant disputes and costly litigation” regarding payment of intercarrier compensation for VoIP traffic as creating a disincentive for investment in IP networks and technology.⁴

The fact that the Commission has yet to determine whether interconnected VoIP service is a telecommunications service or an information service is irrelevant to Verizon’s obligation to pay the tariffed access charges for calls to its 8YY telephone numbers. Under the Commission’s rules, the toll charges for completed calls to toll free telephone numbers are to be paid by the toll free subscriber⁵ to the interexchange carrier providing the 8YY service – in this case, Verizon. The applicable tariffed access charges are the carrier’s carrier charges assessed upon Verizon for its use of another carrier’s local exchange switching facilities for the provision of its 8YY interstate telecommunications services.⁶ The Communications Act defines “exchange access,” the service that Pac-West provides Verizon as an input to its 8YY service, as the “offering of access to telephone exchange services or facilities for the purpose of origination or termination of toll services.”⁷ The Commission has long and consistently held that exchange access is a

³ *Id.* at 2.

⁴ National Broadband Plan at 142, 148 and fns. 51-53.

⁵ Section 52.101(f) of the Commission’s rules, 47 C.F.R. §52.101(f).

⁶ See Section 69.5(b) of the Commission’s rules, 47 C.F.R. §69.5(b). *See also, In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket no. 02-361, Order, FCC 04-97 at ¶14 (rel. Apr.21, 2004) (under the Commission’s rules, access charges are assessed on interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services).

⁷ 47 U.S.C. §153(16).

telecommunications service.⁸ As a result, Verizon cannot legally decline to pay Pac-West's access charges for calls completed to its 8YY telephone numbers on the grounds that the calls originated in a VoIP format rather than a TDM format.

The packet switching deployed in IP networks⁹ and the circuit-switching deployed in the PSTN are simply different transmission technologies used to route telephone traffic. The exchange access that Pac-West provides Verizon to originate calls to Verizon's 8YY telephone numbers remains a telecommunications service regardless of whether the calls are initiated in IP format or TDM format.¹⁰ Nothing in the Act or the Commission's rules supports an interpretation that the transmission technology used to route telephone traffic determines a carrier's right to be compensated for the use of its local exchange switching facilities to originate calls bound for an interexchange carrier's customers. Whether an 8YY call routed to a Verizon customer originates in IP or TDM format, the call imposes the same burden on Pac-West's local exchange switching facilities: Pac-West transports the call to its switch, performs the necessary SMS/8YY database query and switches and carries the call to the IXC designated as the appropriate recipient.¹¹ Verizon's obligation to compensate Pac-West for the use of its originating switching facilities is in no way diminished because a call originates in IP format, nor does Verizon's obligation to pay arise only when a call is originated in TDM format.

⁸ See, e.g., *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶ 780 (rel. May 8, 1997); *In the Matter of Time Warner Request for Declaratory Ruling that Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Service to VoIP Providers*, Memorandum Opinion and Order, DA 07-709 at ¶12 (rel. Mar. 1, 2007).

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, at ¶ 780 (rel. May 8, 1997).

¹⁰ *Id.*

¹¹ Pac-West Petition at 3.

Verizon's attempt to arbitrage its access payment obligations based on the technology used by a local exchange carrier to originate calls to Verizon's 8YY telephone numbers must not be condoned. The decision to use IP technology is an internal business decision and should not impact a local exchange carrier's right to collect access charges for the use of its network by other carriers, especially where, as here, the interexchange carrier requires the LEC to convert 8YY calls to TDM format before transmitting them to the PSTN. A finding that 8YY traffic that originates in IP format but terminates in TDM format is not subject to access charges while traffic that both originates and terminates in TDM format is subject to such charges would not only be inconsistent with Commission precedent but would also discourage carriers from modernizing their networks and slow the deployment of broadband facilities and IP-based services contrary to the objectives of the National Broadband Plan.

For the foregoing reasons and those stated in Pac-West's Petition for Declaratory Ruling, the Commission should grant the Petition and confirm that carriers are entitled to collect access charges for 8YY calls that originate in IP format and terminate on the PSTN in TDM format.

Respectfully submitted,

/s/

August 8, 2011

Mary C. Albert
COMPTel
900 17th Street N.W., Suite 400
Washington, D.C. 20006
(202) 296-6650